Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review- Streamlined Contributor Reporting Requirements Associated with Administration Of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals With Hearing and Speech Disabilities, and Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	

COMMENTS
Of
<u>UNITED STATES CELLULAR CORPORATION</u>

Peter M. Connolly
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Washington, DC 20006
(202) 955-3000

April 22, 2002

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Summary

The FCC cannot and should not adopt a "connection" based system for funding the Universal Service Fund ("USF"). The present system, which relies on assessments of previously reported revenues, offers certainty and predictability. It is also relatively easy to administer and has worked in practice, as USF funding of universal service programs has steadily increased.

Changing to an end user "connection" based system for contributions would create a system which would be difficult to administer and would produce incentives to classify services so as to avoid or minimize USF payments. It would also essentially remove from the system the interexchange carriers which now provide a majority of USF funding, resulting in huge increases in assessments on the remaining contributors.

The FCC's proposals are motivated by a desire to assist AT&T and Worldcom, which have suffered revenue declines. However, basing policy decisions on the problems of individual companies is arbitrary and contrary to the public interest.

Also, pursuant to a 1999 federal court case, federal USF support must be paid out of interstate and international revenues. A "connection" based system would break that nexus. To maintain that because wireless telephones can make interstate calls the FCC can triple or quadruple the payments now made by wireless carriers for USF purposes is to evade the mandate of the court.

The USF does need additional resources and we would support lifting the "safe harbor" percentage caps on wireless contributions to the USF and broadening the contribution "base" to include revenues attributable to the "telecommunications" component of broadband internet access.

Finally, if a revenue-based contribution system is retained, the FCC should not adopt proposals that USF assessments be paid out of current or "projected" revenues. Either proposal would be administratively unworkable and would create more problems than it would solve, and would render USF funding perpetually uncertain.

Lastly, the FCC should not adopt a proposal requiring carriers to remit to USAC only those "universal service" payments they collect from customers. Such a system would eliminate all current incentives to make such payments on the part of carriers or to reimburse carriers on the part of customers. Thus, that proposal would fatally undermine the USF system.

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United States Cellular Corporation ("USCC") hereby files its comments on the Further Notice of Proposed Rulemaking and Report and Order ("FNPRM") in the above captioned docket, released on February 26, 2002.[1] USCC owns and/or operates cellular mobile telephone and PCS systems serving approximately 3.5 million customers in 44 MSA, 103 RSA and 15 BTA markets. USCC is a contributor to the universal service fund ("USF").[2] Accordingly, it has a considerable interest in any action the FCC may take to alter the system by which carriers contribute to the USF.

I. The FCC Cannot and Should Not Adopt A "Connection" Based Contribution System to Fund the USF

At present, as is described in the FNPRM, carriers contribute a percentage of their previously reported interstate/international revenues billed to end users to the USF. Their contributions are determined quarterly by a "contribution factor" which is set by the FCC. The percentage "contribution factor" is in turn determined by the level of demand placed on the USF by the needs of the "high cost," "low income," "schools and libraries," and "rural health care" universal service programs, which are administered by the Universal Service Administrative Company ("USAC"). As those needs increase and as interstate/international revenues fail to increase at the same rate, or remain "flat" or decline, the "contribution factor" increases, as has been the case in 2002. The contribution factor has increased from approximately

[1] See Further Notice of Proposed Rulemaking ("FNPRM"), FCC 02-43, released February 26, 2002.

[2] USCC has also received "high cost" support from the USF for services it has provided as an "Eligible Telecommunications Carrier" in Washington State and for services provided to schools and libraries in its service areas.

6.8% in the first quarter of 2002 to 7.2% in the second quarter.[3] Future increases are likely.

While no carrier relishes having to make mandatory payments to a government agency, the present system has worked relatively well and has enabled USAC and the FCC to support the universal service programs mandated by Section 254 of the Communications Act. In calendar 2000, for example, USAC disbursed approximately $4.4 billion to support USF programs, according to its 2000 Annual Report. USAC's 2001 Annual Report is not yet available, but the FCC Wireline Competition Bureau has stated to counsel that USAC disbursed approximately $4.8 billion in 2001.

As the Commission predicted in 1997 when it adopted the present system pursuant to Section 254 of the Communications Act, assessing carriers for USF contributions based on their end-user revenues has proven to be competitively neutral and relatively easy to administer.[4]

Moreover, as the Commission also understood at that time, any method of assessing contributions not based on revenues, i.e. one based on "lines" or other "connections" to the public switched telephone network, would require the adoption of "equivalency ratios" for calculating the contributions of carriers which do not offer telecommunications on a "per line" basis.[5] In short, shifting from easily

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[3] See Public Notice, "Proposed Second Quarter 2002 Contribution Factor, CC Docket No. 96-45, DA 02-562, released March 8, 2002; Public Notice, "Proposed First Quarter 2002 Universal Service Contribution Factor, CC Docket No. 96-45 DA 01-2823 released December 7, 2001.
[4] In the Matter of Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, 9206-9209 (1997) ("Universal Service Order").
[5] See FNPRM, §123.

measurable revenues as a basis for contributions would create definitional difficulty, bureaucratic complexity, and incentives for gaming the system to minimize USF contributions by relabeling services to fit into exempt categories. Such evasion efforts by carriers would, in turn, generate FCC enforcement actions and ensuing litigation, with all the waste of governmental and private resources associated with that process.

Now, having successfully avoided that particular briar patch for five years, the FCC inexplicably proposes in the FNPRM to plunge into it, by switching to a "connection" based assessment system which would have all the infirmities and inherent unfairness of any other non-revenue based USF funding system. It would be a step backward and the FCC should not take it.

The FCC proposes (FNPRM, ¶34-40) assessments based on "residential," "single line business" and "mobile" "connections" as well as "multiline business" connections. $1.00 per month is the amount proposed for residential, single line and mobile wireless connections, with each wireless handset to be considered a separate "connection" (FNPRM, ¶45).

At the outset, it should be noted that this proposal would undermine the existing USF funding system by removing from it those carriers now providing the majority of its existing revenues. Interexchange carriers now contribute 63% of the USF's revenues. They would be exempted from contributing, unless they also provided competitive local exchange or "special access" services (FNPRM, ¶36). Private network providers and other "carriers carriers" would disappear from the system as well (FNPRM, ¶43). The contributions of those contributors would have to be made up by those remaining in the system, a "solution" which will prove unworkable as well as unjust.

Also, the "connection" proposal will replace administrative and definitional simplicity with complexity and uncertainty. The FCC, for example, will have to determine for these purposes how many "voice grade equivalents" are provided over T-1 circuits and then somehow relate that calculation to "connections."

The FCC's discussion of the possible "tiering" (for USF purposes) of "capacity" to provide "multi-line business connections" (FNPRM, ¶50-58) is almost a parody of complexity, as contributions would be based on calculations of the "maximum capacity" and "speed" of connections. Three things about the proposal are clear, however. Any tiering system will create incentives for carriers to underestimate their "system capacity," and to assign their "connections" to the lowest cost tier and will discourage carriers from buying higher capacity facilities, since such facilities will require them to make higher USF contributions. None of these outcomes is desirable.

The proposed changes appear to be motivated by one factor, namely that AT&T and Worldcom have suffered a decline in their long distance revenues, which in turn, has required them to charge their customers higher percentage "universal service" charges than the contribution factor percentage.[6] With all due sympathy for AT&T and Worldcom, this is simply not a good enough reason to jettison a

[6] FNPRM ¶17 Note 12. Sprint, however, has not suffered a comparable decline.

working system and replace it with an untried system almost guaranteed to fail.

The AT&T/WorldCom loss of business is not a problem from the standpoint of the USF to the extent their lost interstate long distance revenues have gone to other carriers and are reflected in such carriers' contributions. The FNPRM is devoid of data on that subject, or on most subjects connected to the actual workings of the existing system. And, there is certainly no adequate evidence before the FCC to suggest the kind of system failure which could support a fundamental change of this kind.

The FCC cannot base its regulatory decisions on solicitude for one or two carriers. Such decision making is always arbitrary, unfair and likely to produce results contrary to the public interest. It would do so here.

II. The FCC Cannot Adopt a Connection Based System In Light of A Previous Court Decision Which Forbids The Use of Intrastate Revenues For USF Purposes

In 1997, in the Universal Service Order, the FCC decided that it was appropriate to assess both the "intrastate" and "interstate" revenues of carriers to fund federal universal service support for "schools, libraries and rural health care providers."[7] The FCC also concluded that it could lawfully have assessed intrastate revenues for high cost and low-income support but elected not to do so.[8] The FCC made these findings despite the language of Section 2(b) of the Communications Act [47 U.S.C. Section 2(b)] reserving to the states:

> "jurisdiction with respect to…charges,

[7] See Universal Service Order, supra 12 FCC Rcd 8776, 9190 (1997).
[8] Ibid, at 9189.

> classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service…"

47 U.S.C. § 2(b).

Appeals of the Universal Service Order followed, and in 1999, the U.S. Court of Appeals for the Fifth Circuit, while upholding the FCC's USF system on most issues, struck down the Commission's requirement that the schools and libraries and rural health care systems be funded, in part, by using intrastate revenues.[9]

The court found that nothing in Section 254 of the Communications Act, which had created the USF, authorized the FCC to override Section 2(b)'s explicit reservation to the states of authority over intrastate service.[10] Thus, the court found that for the FCC to use intrastate revenues to fund federal universal service programs violated Section 2(b).

In 1999, in response to the court's order, the FCC established a single contribution base for all federal universal support mechanisms based solely on interstate and international end-user telecommunications revenues.[11]

There matters have rested until the FNPRM. In the FNPRM the Commission (¶ 65) seeks comment on whether a connection-based assessment methodology is consistent with Section 254's requirement that all "providers of

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[9] See Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393, 448 (5th Cir. 1999)
[10] Section 254(d) of the Act mandates that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and non-discriminatory basis, to the specific, predictable and sufficient mechanisms established by the Commission to preserve and advance universal service." 47 U.S.C. § 254(d).
[11] See, In the Matter of Federal State Joint Board On Universal Service; Access Charge Reform; Sixteenth Order On Reconsideration in CC Docket No. 96-45; Eighth Report and Order in CC Docket 96-45; Sixth Report and Order in CC Docket 96-262, 15 FCC Rcd 1679, 1685-1686 (1999).

interstate telecommunications services" contribute to universal service. The FCC obviously believes that it is, as it notes in the same paragraph that all end user "connections to the public switched network have an interstate component."

However, that statement, while true, does not take account of Section 2(b) of the Act as interpreted in the Texas Office of Public Utility Counsel case. The relevant holding of that case is that federal USF funding must come from interstate and international revenues.

The logical implication of the case is that contributions to the federal USF must have a nexus, a logical connection, with interstate/international revenues. A connection-based system breaks the nexus and severs that connection. Of course, all "connections" have an "interstate component." But the FCC cannot set an arbitrary value on that component, chosen to achieve a pre-ordained funding result, which has nothing to do with interstate or international service. That is simply an attempt to evade the court's mandate.

The real effect of a connection based system for wireless carriers would either be to tap into their intrastate revenues, which is forbidden by the Texas case or to raise the percentage of interstate revenues contributed to discriminatory and inequitable (and thus illegal) levels.

The Commission (FNPRM, ¶59) estimates that the total percentage of the USF paid by CMRS carriers would rise from 14% to 24% under this proposal. We consider that a low estimate. In USCC's case, we estimate that its yearly payments would roughly quadruple, from about $10 million per year to $42 million. Such an increase would have nothing to do with USCC's interstate revenues which, under the Texas case, are the only appropriate basis for federal universal service payments. The fact that wireless telephones can be used to make interstate calls cannot serve as the basis for increasing wireless carrier contributions in this way. If the FCC can do this, then Section 2(b) is a dead letter.

Any FCC action circumventing Section 2(b) in this way would be vulnerable to summary reversal in the courts, leaving the USF far worse off than it is at present. The FCC cannot and should not do this.

III. The FCC Should Eliminate The Safe Harbor Percentage For Wireless Carriers And Should Broaden The USF's Base of Contributors

USCC would acknowledge that in light of the financial difficulties of AT&T and Worldcom, the USF funding system may need additional sources of revenue. However, as noted in Section II above, the FCC is not free to disregard the restrictions which Section 2(b) of the Act places on the funds available to be used to fund the USF. USCC has no definitive answer to the problems of the USF and it may be that under present law there is no such answer and USF funding of certain programs may have to be scaled back.

However, USCC would propose two reforms, which would be lawful and which would help to alleviate current and projected funding difficulties.

First, USCC would accept elimination of the "safe harbor" percentages which wireless carriers have been able to employ in determining what percentage of their revenues are "interstate/international" in nature. USCC believes that it should be possible to determine, by various measurement and survey techniques, what percentage of a wireless carrier's calls are interstate and international in nature.[12] It may be that in light of the emergence of "national" wireless carriers, with national one rate calling plans, that the percentage of revenues derived from interstate service for those wireless carriers may exceed the upper safe harbor percentage of fifteen percent. If so, such additional revenues should be part of such carriers' contribution bases. If that is where some of AT&T's and Worldcom's lost revenue is going, there is no good reason why it should not be eligible for USF assessments.

Second, the FCC should use its full statutory authority to require USF contributions from all carriers providing "telecommunications" within the meaning of Section 254(d) of the Act. Recent years have witnessed the rise of different types of broadband services, such as Digital Subscriber Line ("DSL"), cable modem service, satellite services, and fixed wireless service.

USCC is aware that the regulatory treatment of such services is now being intensively considered by the FCC in various proceedings.[13] USCC also acknowledges that the FCC has tentatively concluded that wireline broadband

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[12] USCC has been able to determine, with reasonable accuracy, from its toll call records what percentage of its "minutes of use" and revenues are intrastate, interstate, and international in nature.

[13] See, e.g., In the Matter of Appropriate Framework For Broadband Providers; Computer III Further Remand Proceedings: Bell Operating Company Provisions of Enhanced Services; 1998 Biennial Regulatory Review-Review of Computer III and ONA Safeguards and Requirements, CC Docket Nos. 02-33, 95-20, 98-10, Notice of Proposed Rulemaking, FCC 02-42, released February 15, 2002 ("Broadband Order"); and In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory, Ruling; Appropriate Regulatory Treatment For Broadband Access To The Internet Over Cable Facilities, GN Docket No.

Internet access service and cable modem services should be regulated as "information services."[14]

However, in both proceedings, the FCC has sought comment concerning the implications of those classifications for universal service purposes.[15] Specifically, the FCC has asked whether facilities-based providers of broadband Internet access of whatever type should be required to contribute to the USF based on an "underlying telecommunications component" of such access. USCC urges that they should.

USCC has no desire to enter into the theological debates over whether cable modem service, for example, is "telecommunications," or a "telecommunications service" or an "information service with a telecommunications component" and does not consider it relevant to this issue. Apart from whether the FCC has correctly classified such services in the parallel proceedings considering those service classification issues, Section 254(d) clearly provides that:

> "any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service."

In USCC's view, this provision provides the FCC with all necessary statutory authority to develop a formula for determining the "telecommunications" component of broadband "information services" and requiring such service providers to make

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00-185; GS Docket No. 02-52, Declaratory Ruling and Notice of Porposed Rulemaking, released March 15, 2002 ("Cable Modem Ruling").
[14] Broadband Order, ¶20; Cable Modem Ruling, ¶39.
[15] Broadband Order, ¶79-82; Cable Modem Ruling, ¶110.

USF payments. As the FCC has noted, such information services undoubtedly provide "telecommunications,"[16] since:

> "all information services require the use of telecommunications to connect customers to the computers of other processors that are capable of generating, storing, or manipulating information."

Cable Modem Ruling, ¶40.

This is an issue of the greatest importance to the future of the USF. If the FCC pursues a course of action which excludes carriers from having to make USF payments either because they do not provide direct end user "connections" to the network or because the ultimate services they provide are defined as "information services," while at the same time the funding demands on the USF keep increasing, the system will become unsustainable. Carriers providing access to the Internet are now competing with and will provide ever-increasing competition to wireline and wireless carriers. Elementary fairness and the survival of the USF require that they, along with their wireline and wireless competitors, make reasonable USF payments.

How the FCC resolves this issue will go a long way to determining whether there will be a viable USF system in five to ten years. It should resolve it by sensibly broadening the contribution base.

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[16] The Act defines "telecommunications" as the "transmission between or among points specified by the user of information of the user's choosing without change in the form on content of the information as sent and received."

IV. Previous Billed Revenues Remain <u>The Only Viable Basis For Contributions</u>

Assuming the current revenue-based system is retained, the FCC has sought comment on whether it should shift to a current or projected revenue basis for contributions (FNPRM, ¶¶ 84-88) and on whether it should replace the current USF contribution methodology with a "collect and remit" system, under which carriers would be required to remit to USAC only those universal service contributions received from customers (FNPRM, ¶¶ 101-102).

Those proposals also appear to be prompted by an understandable desire to assist carriers with falling revenues. However, they are also unworkable and would cause far more problems than they would solve. Basing contributions on current revenues would probably require monthly reporting by carriers of such revenues to USAC, which would create a huge burden for small carriers, as well as requiring a large "reserve fund" to make up shortfalls in payments of previously guaranteed support.

Basing the USF on "projected" revenues would be even worse. It would be an administrative nightmare, as carriers would be constantly having to revise their prior estimates upward and downward in light of changing market conditions, and thus having to send USAC "true up" payments. Either proposal lacks the certainty and administrative convenience of using prior billed revenues.

Finally, it is hard to imagine a proposal better calculated to destroy the USF than making it, in essence, dependent on the voluntary contributions of end users. Under the present system, carriers contribute based on their prior billed revenues because the law requires it. Customers reimburse carriers or else lose their service. "Collect and remit" would eliminate both incentives, as carriers would only have to pay into the USF the amounts their customers had paid them. If customers did not pay, there would evidently be no consequences, either for the customers or the carriers. Under such circumstances, the USF would rapidly cease to exist.

Conclusion

For the foregoing reasons, the FCC should reject the proposal to switch to a "connection" based USF contribution system. Rather, the FCC should retain the present system. However, it should reform it by eliminating the present CMRS "safe harbor" and, more importantly, the FCC should broaden the contribution base to include broadband providers not now paying into the fund.

Respectfully submitted,

UNITED STATES CELLULAR
CORPORATION

By /s/ Peter M. Connolly
Peter M. Connolly

Holland & Knight LLP
2099 Pennsylvania Avenue, N.W. #100
Washington, DC 20006
(202) 862-5989

Its Attorney

April 22, 2002

WAS1 #1077551 v1